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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/073,706	02/11/2002	Mihai Adrian Tiberiu Sanduleanu	NL010554	4398
24737	7590	11/26/2003	EXAMINER	
PHILIPS INTELLECTUAL PROPERTY & STANDARDS			CUNNINGHAM, TERRY D	
P.O. BOX 3001			ART UNIT	PAPER NUMBER
BRIARCLIFF MANOR, NY 10510			2816	
DATE MAILED: 11/26/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/073,706	SANDULEANU, MIHAI ADRIAN TIBERIU	
<b>Examiner</b>	<b>Art Unit</b>		
Terry D. Cunningham	2816		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 07/25/03.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-11 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-11 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 25 July 2003 is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

13)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a)  The translation of the foreign language provisional application has been received.

14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

1)  Notice of References Cited (PTO-892) 4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_ .  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948) 5)  Notice of Informal Patent Application (PTO-152)  
3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ . 6)  Other: \_\_\_\_ .

## DETAILED ACTION

### *Summary of changes in this action*

1. The objections has been overcome.
2. The rejection to claims 2-4 and 6 under 35 U.S.C. § 112, second paragraph has been overcome.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 7 and 8 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The specification fails to properly enable the circuits shown in Figs. 5 and 6. It is not understood from the specification how the circuits of Figs. 5 and 6 relate or cooperate with the claimed embodiment of Fig. 4. Examiner acknowledges that element 10 of Fig. 4 is stated as being a type of “all-pass circuit” as are the circuits of Figs. 5 and 6. However, it is not understood or seen possible as to how the circuits of Figs. 5 and 6 could be used for “all-pass circuit” 10 of Fig. 4. The specification expressly states the purpose of element 10 as being for “producing two quadrature signals with equal amplitudes”. It is t seen that the circuits of Figs. 5 and 6 would provide this operation. While Fig. 5 is disclosed as receiving an input  $I_i$ , it does not appear the such would provide two current quadrature signals of the same value. With respect to

Fig. 6, such is seen to receive differential input voltages (not currents) and does not appear to provide two current quadrature signals of the same value. Thus, it does not appear that the circuit of Figs. 5 and 6 can operate as respective embodiments for element 10 of Fig. 4.

Examiner has fully considered Applicant's remarks for the above rejection and has not found them to be persuasive. Applicant's remarks are not clearly understood. Regardless of whether the specification individually describes how Fig. 4 works and individually describes how Figs. 5 and 6 works, the specification does not properly enable how to use the circuits of Figs. 5 and 6 with the circuit of Fig. 4, as set forth in claims 7 and 8. Thus, it is not seen that the specification adequately enables one skilled in the art to make and use the invention without undue experimentation.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 7 and 8, there is no support found in the specification for the elements recited therein in addition to the structure recited in claim 1. Although such is unclear, as discussed above, it appears that the structure in claims 7 and 8 are intended to further limit the "splitting means" 10 of Fig. 4. Additionally, claims 7 and 8 fail to recite any connection or cooperation between the elements therein and the structure of claim 1.

Examiner has fully considered Applicant's remarks for the above rejection and has not found them to be persuasive. It is not seen that Applicant has specifically addressed the above rejection to claims 7 and 8.

***Double Patenting***

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 1-11 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-11 of co-pending Application No. 10/217,825. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Examiner has fully considered Applicant's remarks for the above rejection and has not found them to be persuasive. Applicant has not provided any specific remarks to the rejection, thus such is hereby maintained.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 and 11 rejected under 35 U.S.C. 102(b) as being anticipated by Ishihara (USPN 6,054,883- cited by Applicant). Ishihara discloses, in Fig. 2, a circuit comprising: “an input means (15)”; “splitting means (PS1)”; “adding means (AD5)”; “a subtracting means (SU4)”; “a first output (17)”; “a second output (16)” “a first transimpedance converter (AM2 and AM3)” “a second transimpedance converter (EQ7)”; and “a third transimpedance converter (EQ6), all connected and operating similarly as recited by Applicant.

Examiner has fully considered Applicant’s remarks for the above rejection and has not found them to be persuasive. Applicant remarks that the specification describes “all-pass” as being “a circuit that ‘produces two quadrature signals with equal amplitudes and the gm/C time constant of an all-pass tracks the oscillation frequency (using the same tuning mechanism) of the input signal outputted by the oscillator.’” The relevance of this statement is not at all understood. This statement in the specification is not set forth as a definition for the phrase “all-pass” nor would it be understood as such. This is especially true since the term “all-pass” already has well known meaning in the art. Clearly, this definition would be significantly more specific than the meaning known to one skilled in the art. Further, since the law has expressly provided that one cannot impart limitations from the specification to the claims, it is not seen that Applicant’s remarks can be of relevance.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 7, 9 and 10 rejected under 35 U.S.C. 103(a) as being unpatentable over Ishihara (USPN 6,054,883) in view of Liu (USPN 6,496,545). In the above discussed circuit to Ishihara, there is no express disclosure for the details of “phase shifter” 15. Liu discloses, in Fig 5A, an improved phase shifter having increased sideband rejection. This circuit is seen to have “a first transistor (Q3)”, “a second transistor (Q1 or Q2)” and “a capacitor (C1)”. Thus, it would have been obvious for one skilled in the art to used the specific phase shifter in Fig. 5A of Liu for the broad phase shifter 15 of Ishihara for the expected advantage of increased sideband rejection.

Examiner has fully considered Applicant’s remarks for the above rejection and has not found them to be persuasive. Applicant remarks that “As the Examiner is surely aware, a proper motivation must be one that would motivate one of skill in the art of the primary reference...”. This statement is not at all understood or consistent with law concerning 35 U.S.C. § 103. The law has provided the motivation can be found in the relevant prior art or by technical reason as would be understood by one skilled in the art. Finding of prior is not nor never been limited to the applied references, let alone limited to the primary reference. Further, it is clear that if the “primary” reference provided teaching for the modification, the rejection would be made under 35 U.S.C. § 102. Looking to the secondary reference for motivation is clearly acceptable for finding motivation. Thus, this rejection is hereby maintained.

Due to the present indefiniteness and lack of enablement in claim 8, allowable subject matter cannot be determined.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Terry Cunningham whose telephone number is 703-308-4872. The examiner can normally be reached on Monday-Thursday from 7:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy P. Callahan can be reached on 703-308-4876. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is 703-308-0956.

TC  
November 24, 2003

*Terry D. Cunningham*  
Terry D. Cunningham  
Primary Examiner  
Art Unit 2816